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April 3, 2013

Via ECF

Judge Roslynn R. Mauskopf
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Ogunmokun v. Rich Preisig/University Services, et al.*, No. 12-cv-4403 (RRM)(JO)

Dear Judge Mauskopf:

On behalf of defendant Pennsylvania Education Assistance Agency d/b/a American Education Services ("PHEAA"), I write to advise the Court that PHEAA's outstanding request for a pre-motion conference concerning its anticipated motion to dismiss has not been superseded or obviated by *pro se* Plaintiff Olasupo Ogunmokun's recent amended pleadings. The bases for dismissing the original complaint, as set forth in PHEAA's January 14, 2013 letter request, are equally applicable to Plaintiff's latest amended complaint. Plaintiff has still failed to exhaust his administrative remedies and, to the extent he still seeks a claim for intentional infliction of emotional distress, that claim is time-barred and/or not supported by the factual allegations.

Further, as for Plaintiff's newly asserted causes of action, Plaintiff has not alleged a *prima facie* case for "conversion," "fraudulent imposition of pecuniary loss," or violation of the federal Fair Credit Reporting Act. Plaintiff also fails to state a claim under the federal Fair Credit Reporting Act ("FRCA") based on PHEAA's alleged misreporting of Plaintiff's credit information to the credit bureaus. The FCRA only affords borrowers a private right of action against data furnishers in circumstances where the data furnisher has been informed of a consumer dispute as to the completeness or accuracy of credit information it reported previously and then fails to investigate that dispute properly.[1] As one court recently remarked "[i]t can be inferred from the structure of the [FRCA]that Congress did not want furnishers of credit information exposed to suit by any and every consumer dissatisfied with the credit information furnished."[2] Thus, there is no private right of action against a data furnisher simply for reporting information to a credit reporting agency.[3]

For these reasons, and for those set forth in its initial letter, PHEAA respectfully requests permission to file a motion to dismiss Plaintiff's claims.

Respectfully,

Adam B. Michaels

cc: Olasupo Ogunmokun (via US Mail)
80 Newport Street, #2A
Brooklyn, New York 11212

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[1] 15 U.S.C. 1681s-2(c).

[2] *Dabney v. Total Relocation Servs.*, LLC, 2013 N.J. Super. Unpub. LEXIS 54, 12 (App.Div. Jan. 8, 2013).

[3] *See Eiland v. United States Dep't of Educ.*, 2011 U.S. Dist. LEXIS 741, 8-9, 2011 WL 31537 (S.D.N.Y. Jan. 4, 2011) ("[C]laim under the FCRA is also barred because that statute does not provide a private right of action against furnishers of inaccurate information to consumer reporting agencies."); *see also Ogle v. Bac Home Loans Servicing LP*, 2013 U.S. Dist. LEXIS 19986, 20 (S.D. Ohio Feb. 14, 2013) (no private right of action under FRCA for falsely reporting negative information to credit reporting agencies); *Mavilla v. Absolute Collection Serv.*, 2013 U.S. Dist. LEXIS 3925, 17 (E.D.N.C. Jan. 10, 2013) ("There is no private right of action to remedy an alleged breach by the furnisher to provide correct and complete consumer credit information to a CRA").